

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>JAMES E. LEWIS</b>	)	
Claimant	)	
VS.	)	
	)	
<b>F &amp; A FOOD SALES, INC.</b>	)	Docket No. 233,927
Respondent	)	
AND	)	
	)	
<b>UNITED FIRE &amp; CASUALTY COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant requests review of the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore dated June 18, 1998.

**ISSUES**

The ALJ denied claimant's request for preliminary benefits because claimant failed to provide notice of injury by accident within ten days thereof and failed to establish just cause to enlarge the notice period to 75 days. Therefore, notice is the only issue before the Appeals Board on this review.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the briefs of the parties, the Appeals Board finds that the Order entered by the ALJ should be affirmed.

The Appeals Board has jurisdiction to review an appeal from a preliminary hearing Order involving a disputed issue of whether the employee gave timely notice. K.S.A. 1997 Supp. 44-534a; K.S.A. 1997 Supp. 44-551(b)(2)(A).

Claimant alleged an injury by accident occurring on February 11, 1998. At the preliminary hearing, claimant also alleged a series of accidents occurred each and every working day through March 5, 1998, his last day of work. Although claimant initially testified he gave notice of injury by accident to his supervisor on March 6, 1998, the evidence established, and claimant agreed, that notice was not provided until March 12, 1998. The ALJ found claimant suffered injury by accident arising out of and in the course of his employment on February 11, 1998. But benefits were denied because the ALJ found "Claimant has failed to sustain his burden of proof that notice of accident was provided within ten days; and has

failed to establish just cause for enlargement of the notice period to seventy-five days." Claimant argues that by inference the ALJ must have found that claimant did not prove a series of accidents each and every working day because claimant's last day worked was within ten days of the date that notice was provided. The notice provided by claimant, however, was of the February 11, 1998, accident. There was no notice provided of a series of accidents or an each and every day aggravation.

After reviewing the record, the Appeals Board finds that the preliminary hearing Order should be affirmed for the reasons given by the ALJ at the conclusion of the hearing. Claimant suffered a specific traumatic injury on February 11, 1998. Within three or four days of that accident claimant knew that he had suffered a significant injury and that his pain was more severe than what he had experienced previously during his 15½ years working for respondent. Claimant's failure to timely report that accident is not adequately explained and just cause was not established.

In support of his argument for a series of accidents, claimant primarily points to the May 26, 1998, report by the treating neurosurgeon Ali B. Manguoglu, M.D., which states: "It is my opinion his 15 1/2 years of heavy duty work at F&A Foods did aggravate his back condition, as well as the incident on February 11, 1998 which resulted in a herniated lumbar disc." What Dr. Manguoglu appears to be saying is that claimant's many years of manual labor contributed to his degenerative condition, but the disc herniation occurred when claimant fell on February 11. That report does not prove a causal connection between claimant's work activities after the February 11, 1998 incident and the injury that resulted in the surgery. Claimant's testimony likewise does not support a conclusion that his work after February 11, 1998 caused a worsening of his condition. The medical treatment and the temporary total disability claimant is seeking are the result of the herniated disc. Had the herniation not occurred, claimant would still be working. Accordingly, February 11, 1996 is the appropriate date of accident for notice purposes.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore dated June 18, 1998, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1998.

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BOARD MEMBER

c: Patrik W. Neustrom, Salina, KS  
James B. Biggs, Topeka, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director